

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
	:	05cr909 (DLC)
-v-	:	
	:	<u>MEMORANDUM OPINION</u>
D'ANGELO NUNEZ,	:	<u>AND ORDER</u>
	:	
Defendant.	:	
	:	
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DENISE COTE, District Judge:

D'Angelo Nunez has moved for compassionate release pursuant to 18 U.S.C § 3582(c)(1)(A). For the following reasons, that application is denied.

In March 2007, this Court sentenced Nunez principally to the mandatory minimum term of imprisonment of 240 months following his conviction at trial. In July 2012, Nunez was apparently assaulted by another inmate and sustained an injury to his head that causes him a host of ongoing health issues.

Nunez is now 44 years of age. The Bureau of Prisons ("BOP") projects that he will be released in February 2023. A citizen of the Dominican Republic, Nunez is under an Immigration and Customs Enforcement ("ICE") detainer and will be transferred to ICE custody upon his release, likely for deportation.

In December 2018, Nunez petitioned the warden of his facility, the medium-security Federal Correctional Institution

Victorville ("FCI Victorville"), for modification or reduction of sentence based on physical and mental health issues.

Preceding the COVID-19 public health emergency by more than a year, that petition did not raise the COVID-19 pandemic as a ground for release. The warden denied Nunez's petition.

On May 5, 2020, Nunez, proceeding pro se, filed the instant motion pursuant to 18 U.S.C. § 3582(c)(1)(A) for a reduced sentence.¹ In his application, Nunez cites a number of health issues as grounds for relief: the injuries that stem from his 2012 assault, hypertension, and generalized breathing problems and fatigue. For the first time, Nunez raises the danger posed to him by the COVID-19 pandemic as a basis for reducing his sentence. The Government opposed the May 5 motion on June 2.

Nunez's petition meets the statutory exhaustion requirement of 18 U.S.C. § 3582(c)(1)(A) insofar as it seeks a reduction of sentence based on the injuries he suffered after the 2012 assault. Consequently, Nunez's sentence may be reduced if, after consideration of the 18 U.S.C. § 3553(a) factors, a court finds that "extraordinary and compelling reasons" warrant such a reduction. 18 U.S.C. § 3582(c)(1)(A)(i). Pursuant to the relevant United States Sentencing Guidelines Application Note,

¹ The May 5 application was received and docketed by the Court on May 22, 2020.

Nunez can demonstrate that extraordinary and compelling reasons justify relief if he has a "terminal illness" or a condition that "substantially diminishes" his ability "to provide self-care within the environment of a correctional facility."

U.S.S.G. § 1B1.13, Application Note 1(A). Nunez has not shown that he meets either of those conditions.


Insofar as Nunez seeks a reduced sentence based on an increased risk of serious illness from COVID-19, his motion is denied for his failure to exhaust his administrative remedies, as required by § 3582(c)(1)(A). The Government has not waived that statutory requirement. Accordingly, it is hereby

ORDERED that the May 5 motion is denied. This denial is without prejudice to Nunez bringing a renewed application based on a combination of circumstances, including the COVID-19 pandemic, so long as he has complied with the statutory exhaustion requirement.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mail this Order to Nunez and note mailing on the docket.

SO ORDERED:

Dated: New York, New York
June 2, 2020



DENISE COTE
United States District Judge